

partnerships, the term means limited partnership interests that do not have the power to exercise control of the entity. We ask commenters specifically to address whether the proposed fifteen percent voting interest limitation strikes the correct balance, or whether a higher percentage would facilitate capital formation without unduly contributing to a proliferation of shams. In addition, the Second Report and Order, all investor interests would be calculated on a fully-diluted basis, meaning that agreements such as stock options, warrants and convertible debentures generally would be considered to have a present effect and would be treated as if the rights thereunder already have been fully exercised.¹⁴⁶ We recognize that the requirement that other investors own only passive interests would be a departure from the definition of a minority or women-owned business adopted in the Second Report and Order, but because of the very significant financial contribution that may be made by such other investors in designated entities, we believe that the passive equity requirement may be appropriate as an additional safeguard. In addition, we seek comments on whether these rules as currently framed may affect the ability of legitimate designated entities to obtain the capital needed to participate in the auction.

111. As a second proposed option, women and minority-owned firms would be able to sell up to 75 percent of the company's equity, provided that no single investor may hold 25 percent or more of the firm's passive equity, which is defined in the same manner as above. For example, a corporation with 100 shares of voting stock and 100 shares of non-voting stock, with the 200 shares representing the total outstanding shares of the company, could qualify as a minority or women-owned business under the following circumstances. The minority or women principals would have to own at least 51 shares of voting stock, which satisfies the requirement that they have voting control and, in this case, also meets the requirement that they hold at least 25 percent of the equity. Two other investors could each own 34 shares of non-voting stock and fifteen shares of voting stock, which represents 24.5 percent of the company's equity for each of the shareholders. A third investor could own the remaining 32 shares of non-voting stock and fifteen shares of the voting stock, or 23.5 percent of the equity. The remaining 4 shares of voting stock may be sold to other investors.

112. Whichever option is chosen, we would require establishment of a "control group" for women and minority-owned firms in much the same way we did for purposes of eligibility

eligible minorities or women, in order to retain at least 50.1 percent of the value of all outstanding shares of the corporation's stock, must own all of the corporation's remaining shares of stock; that is, 95 shares of voting stock and six shares of non-voting stock.

¹⁴⁶ As also noted in the Second Report and Order, we will consider departing from the requirement that the equity of investors in minority and women-owned businesses must be calculated on a fully-diluted basis only upon a demonstration, in individual cases, that options or conversion rights held by non-controlling principals will not deprive the minority and women principals of a substantial financial stake in the venture or impair their rights to control the designated entity. See Second Report and Order at ¶ 277.

to bid in the entrepreneurs' blocks. Specifically, winning bidders, transferees or assignees would have to identify on their long-form applications a control group (consisting entirely of minorities and/or women or entities 100 percent owned and controlled by minorities and women) that has de jure and de facto control of the applicant and holds either at least 50.1 or 25 percent of the applicant's equity, depending upon which option is elected.

113. We believe that a modification of our 50.1 percent equity requirement would best achieve the Congressional objective of providing effective and long-term economic opportunities for women and minority-owned firms in narrowband PCS. At the same time, we propose to maintain strict enforcement of the requirement that actual control reside with the qualified designated entities. Thus, to establish their eligibility for tax certificates, enhanced installment payments, bidding credits and relaxed cellular attribution rules, women and minority-owned applicants electing to use the 25 percent equity option could not in any instance allow an individual investor who is not in the control group to own more than a 25 percent passive equity interest. This restriction would apply even in circumstances in which allowing an investor to exceed these limitations would not result in the applicant's exceeding the gross revenues and other financial standards that apply to other bidders in the entrepreneurs' blocks and other situations involving financial caps. These structural safeguards, as well as the general requirement that other investors hold only passive interests in women and minority-owned applicants, would help to ensure that control truly remains with the women and minority designated entities.

114. For example, a women or minority-owned firm electing to use the 25 percent option may have a non-eligible investor with more than a 25 percent passive stake and still qualify to bid in the entrepreneurs' blocks or for benefits that apply to small businesses, as long as the attributable revenues of the investor do not cause the applicant to exceed the gross revenues/total assets caps. In these contexts, no additional restrictions would be necessary, because women and minority-owned applicants, like other applicants, would be eligible to bid in these blocks and to qualify as small businesses so long as they comply with the same restrictions on financial eligibility that apply to other applicants. Since the attribution rule itself operates to ensure compliance with size limitations, it would not be necessary to impose additional restrictions on the size of interests held by investors with attributable interests. This firm would not qualify, however, for special measures applicable only to women and minority-owned businesses, such as "enhanced" installment payments or the 15 or 25 percent bidding credits, because it has a single non-eligible investor with more than a 25 percent passive interest. In circumstances in which women and minorities are required to retain only 25 percent of the firm's equity, this additional structural restriction would be appropriate because the objective in this context is to ensure not merely financial eligibility, but that women and minorities retain control of the license.

115. We set forth previously rules defining more explicitly the term "control" for purposes of determining whether a "control group" maintains de facto as well as de jure

control of an applicant.¹⁴⁷ We propose to apply those rules equally to the minority and women principals of minority and women-owned applicants. Consistent with our general policies with regard to women-owned applicants for purposes of our multiple ownership and cross-ownership rules in this broadcast context, we do not propose to adopt, at this time, any special rules or presumptions to determine whether women-owned applicants exercise independent control of their firms. See In the Matter of Clarification of Commission Policies Regarding Spousal Attribution, 7 FCC Rcd. 1920 (1992)

116. We also note here that we are proposing to depart from the provision in the Third Report and Order that bars publicly traded companies from qualifying as minority and woman-owned businesses for purposes of participating in auctions. Most of the steps proposed to assist these designated entities in this Further Notice (e.g., bidding credits and installment payments) are confined to winning bidders in the entrepreneurs' blocks, where there would be a financial limit on the size of participants. Because of the large capital entry costs of narrowband PCS, we now believe that even publicly traded companies owned by women and minorities that qualify to bid in entrepreneurs' blocks require additional measures, such as bidding credits and installment payments, to be able to participate successfully.

117. As noted above, we propose that applicants owned by women and minorities must meet the limitations on gross revenues, total assets and personal net worth to qualify for entry into the entrepreneurs' blocks. The size limitations would not apply, however, to all measures designed to assist applicants owned by minorities and or women. The tax certificate policy applies to all narrowband PCS licenses and would not be limited to licenses in the entrepreneurs' blocks. Therefore, businesses owned by minorities and women need not meet the gross revenue and other financial restrictions to qualify for tax certificates. But minority and women-owned firms would have to satisfy the Commission's structural ownership requirements to receive the benefits of tax certificates; that is, they would be subject to the limitation that interests held by investors who are not women and minorities must be passive.

4. Definition of an Affiliate

118. In the Second Report and Order, we referenced the SBA's affiliation rules for purposes of defining generally whether an entity qualifies as a small business and gave examples of how the affiliation rules would be applied. In the Fifth Report and Order, we expanded on the SBA's affiliation rules in establishing detailed affiliation standards for narrowband PCS to be used when designated entities must include "affiliates" to determine their eligibility for special designated entity provisions. In the Second Memorandum Opinion and Order that we adopted in this docket, we incorporate into our generic auction rules the affiliation standards that we established for narrowband PCS in the Fifth Report and Order. We propose to apply these affiliation standards would also apply to narrowband PCS for purposes of determining any of the above described, sized-based eligibility criteria for

¹⁴⁷ See supra ¶ 112.

designated entities seeking special treatment under the provisions adopted herein. These standards would give applicants clear guidance regarding the relationships that we will attribute for purposes of applying any of our sized-based eligibility criteria.

I. Limit on Licenses Awarded in Entrepreneurs' Blocks

119. The special provisions which we propose for designated entities are based, in part, on our mandate to fulfill the congressional goal that we disseminate licenses among a wide variety of applicants. 47 U.S.C. § 309(j)(3)(B). Therefore, in proposing the financial assistance measures set forth in this Further Notice, we are concerned about the possibility, even if remote, that a few bidders will win a very large number of the licenses in the entrepreneurs' blocks. As a consequence, the benefits that Congress intended for designated entities would be enjoyed, in disproportionate measure, by only a few individuals or entities. Congress, in our view, did not intend that result. We therefore propose steps to ensure that the financial assistance provided through our rules is dispersed to a reasonable number of applicants who win licenses in these blocks.

120. To achieve a fair distribution of the benefits intended by Congress, we propose a limit on the total number of licenses within the entrepreneurs' blocks that a single entity could win at auction. In setting this limit, we would avoid imposing a restriction that would prevent applicants from obtaining a sufficient number of licenses to create large and efficient nationwide or regional services. Specifically, we propose a limitation that no single entity may win more than 10 percent of the licenses available in the entrepreneurs' blocks. These licenses could be in any combination of frequency blocks. Such a limit would ensure that at least 10 winning bidders enjoy the benefits of the entrepreneurs' blocks. At the same time, it would allow bidders to effectuate aggregation strategies that include large numbers of licenses and extensive geographic coverage.

121. Further, this limitation would apply only to the total number of licenses that may be won at auctions in these proposed entrepreneurs' blocks; it would not be an ownership cap that applies to licenses that might be obtained after the auctions. For purposes of implementing this restriction, we would consider licenses to be won by the same entity if an applicant (or other entity) that controls, or has the power to control licenses won at the auction, controls or has the power to control another license won at the auction.

J. Redesignation of Certain Narrowband PCS Spectrum Blocks

122. Finally, we are concerned that there are companies that would be eligible for an entrepreneurs' block license that may desire larger license areas than MTAs and BTAs. It appears that over half of the bidders in the nationwide auction would have qualified for an entrepreneurs' block license. As a result, we propose to redesignate the two BTA licenses as regional licenses organized in the same configuration set forth in Section 24.102 of the rules. Doing so would give designated entities an opportunity to bid on a larger and more valuable

license under the rules for entrepreneurs' blocks. We also seek comment on other means to achieve larger geographic license sizes such as designating these BTA licenses as nationwide licenses or by maintaining the BTA designation, but allowing combinatorial bidding for the designated regions. Commenters should also address the appropriate premium we should adopt for comparison of combinatorial and BTA license bids if we allow combinatorial bidding. We also seek comment on whether some of the MTA and BTA response channels should be redesignated as larger license areas with bidding limited only to those entities eligible to bid for entrepreneurs' block licenses.

VII. PROCEDURAL MATTERS AND ORDERING CLAUSE

A. Regulatory Flexibility Analysis

123. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 604, the Commission's final analysis for the Memorandum Opinion and Order and the Commission's initial regulatory flexibility analysis for the Further Notice is as follows:

Memorandum Opinion and Order -- Final Analysis

124. Need for, and Purpose of, this Action. As a result of new statutory authority, the Commission may utilize competitive bidding mechanisms in the granting of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis, see generally 5 U.S.C. § 603, within the Notice of Proposed Rule Making in this proceeding, and published Final Regulatory Flexibility Analyses within the Second Report and Order (at ¶¶ 299-302) and the Third Report and Order (at ¶¶ 91-94). As noted in these previous final analyses, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out statutory mandates that certain designated entities, including small entities, be afforded an opportunity to participate in the competitive bidding process and in the provision of spectrum-based services.

125. Summary of the Issues Raised by the Public Comments. In regard to the specific narrowband PCS issues addressed by this Third Memorandum Opinion and Order, no comments were submitted in response to our Initial Regulatory Flexibility Analysis.

126. Significant Alternatives Considered. Although, as described in (B) above, no comments were received pertaining to narrowband PCS, the Second Report and Order and Third Report and Order addressed at length the general policy considerations raised as a result of the Commission's new auction authority.

Further Notice -- Initial Analysis

127. Reason for the Action. The purpose of the Further Notice is to implement competitive bidding rules and regulations rules consistent with the Commission's competitive bidding authority that will carry out the statutory mandates that certain designated entities,

including small entities, are afforded an opportunity to participate in the competitive bidding process and in the provision of spectrum-based services.

128. Objectives of this Action. The Omnibus Budget Reconciliation Act of 1993 and the subsequent Commission actions to implement it are intended to establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out statutory mandates that certain designated entities, including small entities, are afforded an opportunity to participate in the competitive bidding process and in the provision of narrowband PCS services.

129. Legal Basis. Authority for the for the Further Notice can be found in the Omnibus Budget Reconciliation Act of 1993 and in Sections 2(a), 4(i) 303(r), 309(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152 (a), 154 (i), 303(r), 309(i) and 309(j).

130. Reporting, Recordkeeping and Other Compliance Requirements. The proposals under consideration in this Further Notice include the possibility of new reporting and recordkeeping requirements for a number of small business entities.

131. Federal Rules Which Overlap, Duplicate or Conflict With These Rules. None.

132. Description, Potential Impact, and Number of Small Entities Involved. The rule changes proposed in this Further Notice could effect smaller entities if they have mutually exclusive applications for initial licenses or permits for narrowband PCS licenses. The Further Notice proposes to establish certain narrowband PCS spectrum blocks for bidding exclusively by smaller entities and to provide installment payments and bidding credits to certain eligible entities bidding within those blocks.

133. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives. The Further Notice proposes certain provisions for smaller entities designed to ensure that such entities have the opportunity to participate in the competitive bidding process and in the provision of narrowband PCS services.

B. Ex Parte Rules

134. This is a non-restricted notice and comment rule making proceeding. Ex Parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

C. Comment Dates

135. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before September 16, 1994 and reply comments on or before October 3, 1994. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, DC 20554. The complete text of this document may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, Room 236, Washington, DC 20554, telephone (202) 857-3800.

D. Ordering Clause

136. Accordingly, IT IS ORDERED, That the petitions for reconsideration ARE GRANTED to the extent described above and DENIED in all other respects.

137. IT IS FURTHER ORDERED, that Part 24 of the Commission's Rules IS AMENDED as set forth in the attached Appendix. IT IS ORDERED, that the rule changes made herein WILL BECOME EFFECTIVE 30 days after their publication in the Federal Register. This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

**APPENDIX
RULES**

Part 24 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 24 continues to read as follows:

AUTHORITY: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.129 is revised to read as follows:

Section. 24.129 Frequencies.

The following frequencies are available for narrowband PCS. All licenses on channels indicated with an (*) will be eligible for bidding credits of 25 percent, and all licenses indicated with an (**) will be eligible for bidding credits of 40 percent, as set forth in Section 24.309(b) of this Part if competitive bidding is used to award such licenses.

(a) Eleven frequencies are available for assignment on a nationwide basis as follows:

(1) Five 50 kHz channels paired with 50 kHz channels:

Channel 1: 940.00-940.05 and 901.00-901.05 MHz;
Channel 2: 940.05-940.10 and 901.05-901.10 MHz;
Channel 3: 940.10-940.15 and 901.10-901.15 MHz;
Channel 4: 940.15-940.20 and 901.15-901.20 MHz; and,
Channel 5: 940.20-940.25 and 901.20-901.25 MHz.*

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 6: 930.40-930.45 and 901.7500-901.7625 MHz;
Channel 7: 930.45-930.50 and 901.7625-901.7750 MHz; and,
Channel 8: 930.50-930.55 and 901.7750-901.7875 MHz;*

(3) Three 50 kHz unpaired channels:

Channel 9: 940.75-940.80 MHz;
Channel 10: 940.80-940.85 MHz; and,

Channel 11: 940.85-940.90 MHz.*

(b) Six frequencies are available for assignment on a regional basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 12: 940.25-940.30 and 901.25-901.30 MHz; and,

Channel 13: 940.30-940.35 and 901.30-901.35 MHz.**

(2) Four 50 kHz channels paired with 12.5 kHz channels:

Channel 14: 930.55-930.60 and 901.7875-901.8000 MHz;

Channel 15: 930.60-930.65 and 901.8000-901.8125 MHz;

Channel 16: 930.65-930.70 and 901.8125-901.8250 MHz; and,

Channel 17: 930.70-930.75 and 901.8250-901.8375 MHz.**

(c) Seven frequencies are available for assignment on a MTA basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18: 940.35-940.40 and 901.35-901.40 MHz; and,

Channel 19: 940.40-940.45 and 901.40 -901.45 MHz.*

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 20: 930.75-930.80 and 901.8375-901.8500 MHz;

Channel 21: 930.80-930.85 and 901.8500-901.8625 MHz; and,

Channel 22: 930.85-930.90 and 901.8625-901.8750 MHz.*

(3) Two 50 kHz unpaired channels:

Channel 23: 940.90-940.95 MHz; and,

Channel 24: 940.95-941.00 MHz.*

(d) Two 50 kHz channels paired with 12.5 kHz channels are available for assignment on a BTA basis:

Channel 25: 930.90-930.95 and 901.8750-901.8875 MHz; and,

Channel 26: 930.95-931.00 and 901.8875-901.9000 MHz.*

Note 1: Operations in markets or portions of markets which border other countries, such as Canada and Mexico, will be subject to on-going coordination arrangements with neighboring countries.

3. Section 24.130 is amended by revising paragraphs (b) and (c) to read as follows:

* * * * *

(b) The following four 12.5 kHz unpaired channels are available for assignment on a MTA basis:

- A: 901.9000-901.9125 MHz;
- B: 901.9125-901.9250 MHz;
- C: 901.9250-901.9375 MHz; and
- D: 901.9375-901.9500 MHz.

(c) The following four 12.5 kHz unpaired channels are available for assignment on a BTA basis:

- E: 901.9500-901.9625 MHz;
- F: 901.9625-901.9750 MHz;
- G: 901.9750-901.9875 MHz; and
- H: 901.9875-902.0000 MHz.

4. Section 24.303 is revised to read as follows:

Sec. 24.303 Competitive Bidding Mechanisms.

- (a) Sequencing. The Commission will establish and may vary the sequence in which narrowband PCS licenses will be auctioned.
- (b) Grouping. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.
- (c) Reservation Price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.
- (d) Minimum Bid Increments. The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish by Public Notice a suggested opening bid or a minimum opening bid on each license.
- (e) Stopping Rules. The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.
- (f) Activity Rules. The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in

connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one activity rule waiver during each stage of an auction, or one automatic waiver during a specified number of bidding rounds. The Commission may change by Public Notice the number and frequency of such automatic activity rule waivers for a specific auction.

(g) Bidder Identification During Auctions. The Commission may choose, on an auction-by-auction basis, to release the identity of the bidders associated with bidder identification numbers. The Commission will announce by Public Notice before each auction whether bidder identities will be revealed.

5. Section 24.308 is revised to read as follows:

Sec. 24.308 License Grant, Denial, Default, and Disqualification.

(a) Unless eligible for installment payments and/or a bidding credit, each winning bidder is required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in Section 1.2109 of this Chapter.

6. Section 24.309 is revised to read as follows:

Sec. 24.309 Designated Entities.

(a) Designated entities entitled to preferences in the narrowband PCS service are small businesses and businesses owned by members of minority groups and/or women as defined in §§ 24.320(b) and 24.320(c) of this Subpart.

(b) Designated entities will be eligible for certain special narrowband PCS provisions as follows:

(1) **Installment payments.** Small businesses, including small businesses owned by members of minority groups and women, will be eligible to pay the full amount of their winning bid on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth in Section 1.2110(d) of this Chapter.

(2) **Bidding Credits.** Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, will be eligible for a twenty-five (25) percent bidding credit when bidding on the following licenses: (1) the nationwide licenses on Channel 5, Channel 8 and Channel 11; (2) all MTA licenses on Channel 19, Channel 22, Channel 24; and (3) all BTA licenses on Channel 26. This bidding

credit will reduce by 25 percent the bid price that businesses owned by members of minority groups and women will be required to pay to obtain a license. Businesses owned by women and/or minorities, including small businesses owned by women and/or minorities will be eligible for a forty (40) percent bidding credit when bidding on all regional licenses on Channel 13 and Channel 17. In section 24.129 above, the licenses that will be eligible for 25 percent bidding credits are indicated by an (*); the licenses that will be eligible for 40 percent bidding credits are indicated by an (**).

(3) Tax Certificates. Any non-controlling initial investor in a business owned by members of minority groups and/or women and who provides "start-up" financing, which allows such business to acquire a narrowband PCS license(s), and any non-controlling investor who purchases an interest in a narrowband PCS license held by a business owned by members of minority groups and/or women within the first year after license issuance, may, upon the sale of such investment or interest, request from the Commission a tax certificate. Any narrowband PCS licensee who assigns or transfers control of its license to a business owned by members of minority groups and/or women may request that the Commission issue the licensee a tax certificate.

(c) Short-Form Application Certification: Long-Form Application Disclosure.

(1) All applicants for licenses under the designated entity provisions set forth in this section shall certify on their short-form applications (Form 175) that they are eligible for those preferences pursuant to this section.

(2) In addition to the requirements in subpart I, all designated entity applicants that are winning bidders shall, in an exhibit to their long-form applications --

(i) identify each member of the applicant's control group, regardless of the size of the member's total interest in the applicant, and each member's minority group or gender classification, if applicable;

(ii) disclose the gross revenues of the applicant and its affiliates, and other persons that hold interests in the applicant and their affiliates (including all members of the applicant's control group); and

(iii) certify that the personal net worth of the applicant (if an individual), each affiliate and each person that hold an interest in the applicant is less than \$40 million.

(d) Audits. Applicants and licensees claiming eligibility under this section shall be subject to random audits by the Commission.

(e) Definitions. The terms *affiliate*, *business owned by members of minority groups and women*, *consortium of small businesses*, *control group*, *gross revenues*, *members of minority groups*, *passive equity*, *personal net worth*, and *small business* used in this section are defined in § 24.320.

(f) Unjust Enrichment. Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the following unjust enrichment provisions:

(1) If a small business paying for a narrowband PCS license in installment payments seeks to transfer a license to a non-small business entity during the term of the license, the remaining principal balance must be repaid as a condition of the license transfer.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of the change as a condition of approval. Increases in gross revenues that result from equity investments that are not attributable to the licensee under § 24.320(b)(2)(iv), revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

7. Section 24.320 is added to read as follows:

§ 24.320 Definitions.

(a) Scope. The definitions in this section apply to §§ 24.309-24.315 of this subpart, unless otherwise specified in those sections.

(b) Small Business; Consortium of Small Businesses.

(1) A *small business* is an entity that (i) together with its affiliates has average annual gross revenues that are not more than \$40 million for the preceding three calendar years; (ii) has no attributable investor or affiliate that has a personal net worth of \$40 million or more; (iii) has a control group all of whose members and affiliates are considered in determining whether the entity meets the \$40 million annual gross revenues and personal net worth standards; and (iv) such control group holds 50.1 percent of the entity's voting interest, if a corporation, and at least 25 percent of the entity's equity on a fully diluted basis, except that a business owned by members of minority groups and/or women (as defined in subsection (c)) may also qualify as a small business if a control group that is 100 percent composed of members of minority groups and/or women holds 50.1 percent of the entity's voting interests, if a corporation, and 50.1 percent of the entity's total equity on a fully diluted basis and no single other investor holds more than 49.9 percent of passive equity in the entity.

(2) Attribution and Aggregation of Gross Revenues and Personal Net Worth.

(i) Except as specified in paragraphs (iii) and (iv), the gross revenues of the applicant (or licensee) and its affiliates, and other persons that hold interests in the applicant (or

licensee) and their affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is a small business.

(ii) The personal net worth of individual applicants (or licensees) and other persons that hold interests in the applicant (or licensee), and their affiliates, if less than \$40 million, shall not be considered for purposes of determining whether the applicant (or licensee) is eligible to bid as a small business.

(iii) Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(iv)(a) The gross revenues and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered so long as (1) such person holds no more than 25 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's or control group; and (2) the applicant has a control group that owns at least 25 percent of the applicant's total equity and, if a corporation, holds at least 50.1 percent of the applicant's voting interests.

(b) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant shall not be considered so long as (1) such person holds no more than 49.9 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's control group; and (2) the applicant has a control group that consists entirely of members of minority groups and/or women and that owns at least 50.1 percent of the applicant's total equity and, if a corporation, at least 50.1 percent of the applicant's voting interests.

Note: Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(3) A *small business consortium* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business.

(c) Business Owned by Members of Minority Groups and/or Women. A *business owned by members of minority groups and/or women* is an entity (i) that has a control group composed 100 percent of members of minority groups and/or women who are United States Citizens, and (ii) such control group owns and holds 50.1 percent of the voting interests, if a corporation, and (A) owns and holds 50.1 percent of the total equity in the entity, provided that all other investors hold passive interests; or (B) holds 25 percent of the total equity in the entity, provided that no single other investor holds more than 25 percent passive equity interests in the entity. In a partnership, all general partners must be members of minority

groups and/or women. Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(d) Gross Revenues. *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited quarterly financial statements for the relevant period.

(e) Personal Net Worth. *Personal net worth* shall mean the market value of all assets (real and personal, tangible and intangible) owned by an individual, less all liabilities (including personal guarantees) owed by the individual in his individual capacity or as a joint obligor.

(f) Members of Minority Groups. *Members of minority groups* includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(g) Passive Equity. *Passive equity* shall mean (i) for corporations, non-voting stock or stock that includes no more than fifteen percent of the voting equity; (ii) for partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(h) Control Group. A *control group* is an entity, or a group of individuals or entities, that possesses de jure control and de facto control of an applicant or licensee, and as to which the applicant's or licensee's charters, articles of incorporation, bylaws, agreements and any other relevant documents (and amendments thereto) provide (i) that the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation; (ii) that the entity and/or its members receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock of a corporation; (iii) that, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and (iv) that the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to its interest in the total equity of the applicant or licensee.

Note: Voting control does not always assure de facto control, such as, for example, when the voting stock of the control group is widely dispersed (see, e.g., § 24.720 (e) (2) (iii)).

(i) Affiliate. (1) Determinations regarding whether an individual or entity will be considered an *affiliate* of (a) an applicant or (b) a person holding an attributable interest in an applicant

under paragraph (b) (2) will be made pursuant to the general affiliation rules set forth in section 24.720 (l) of this part.

8. Section 24.406 is revised to read as follows:

Sec. 24.406 Filing of Narrowband PCS applications, fees, and numbers of copies.

(a) As prescribed by Sections 24.305, 24.307, and 24.409 of this part, standard formal application forms applicable to the narrowband PCS may be obtained from either:

- (1) Federal Communications Commission, Washington, DC 20554; or
- (2) by calling the Commission's Forms Distribution Center, (202) 418-3676.

(b) Applications for the initial provision of narrowband PCS service must be filed on FCC Form 175 in accordance with the rules in Section 24.305 and Part 1, Subpart Q. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form 401 for initial narrowband PCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules. Narrowband PCS applicants filing Form 401 need not complete Schedule B.

(c) All applications for Narrowband PCS radio station authorizations (other than applications for initial provision of narrowband PCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: Narrowband PCS Processing Section. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with Sec. 0.401(b).

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau, Narrowband PCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by Sec. 1.743. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under Section 1.2108 of the rules shall also submit 2 paper copies as provided in Sec. 1.51 of the rules.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm X 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm x 176 mm) or 5 x 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

- (i) The name of the applicant;
- (ii) The type of application (e.g. nationwide, regional, MTA, BTA, response channel);
- (iii) The month and year of the document;
- (iv) Name of the document;
- (v) File number, applicant identification number, and call sign, if assigned; and
- (vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Each microfiche copy of pleadings shall include:

- (A) The month and year of the document;
- (B) Name of the document;
- (C) Name of the filing party;
- (D) File number, applicant identification number, and call sign, if assigned;
- (E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

9. Section 24.422 is revised to read as follows:

Sec. 24.422 Amendment of application for Narrowband Personal Communications Service filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications. These are defects which may not be cured. See also Section 1.2105.

(b) In the Narrowband PCS, applicants will be permitted to amend their Form 175 applications to make minor amendments to correct minor errors or defects such as typographical errors. Applicants will also be permitted to amend FCC Form 175, to make ownership changes or changes in the identification of parties to bidding consortia, provided such changes do not result in a change in control of the applicant and do not involve another applicant (or parties in interest to an applicant) who has applied for any of the same licenses as the applicant. Amendments which change control of the applicant will be considered major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also Section 1.2105.

10. Section 24.429 is amended by deleting paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c), respectively, to read as follows:

Sec. 24.429 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of Sec. 1.2105 (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which Sec. 24.423 (c) and 24.423 (g) would apply or which would cause the applicant to lose its status as a designated entity under Section 24.309, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) If the amendment would cause the applicant to lose its status as a designated entity under Section 24.309, the applicant must notify the Commission of this change in status and must comply with the obligations imposed by Sections 24.308, including increasing its down payment to the level required as a non-designated entity.

(c) The provisions of Section 22.927 will apply in the event of the individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

11. Section 24.430 is revised to read as follows:

Sec. 24.430 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with Section 1.2108 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of Secs. 1.41 through 1.52 except where otherwise provided in Section 1.2108;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.